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[31/05/24]

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Subject: Response to the Review of Restraint of Trade, Non-Disclosure, and Non-Solicitation Clauses

## Introduction

I am the CEO of Home Loan Experts, [homeloanexperts.com.au](http://homeloanexperts.com.au), a mortgage-brokering business based in Australia with a team of 29 employees. We have settled more than \$7 billion in home loans over the last 15 years, making us one of Australia's largest brokerages. Our company invests heavily in time and resources to build and train our team. For the 40 per cent of our staff members who are from Nepal, this cost includes sponsoring their moves to Australia.

Home Loan Experts generates all its new business leads at significant cost, through paid advertising and the development of online tools. These leads are crucial for helping our brokers build relationships and generate repeat and referral business. Given these realities, we have serious concerns regarding the proposed review of restraint of trade, non-disclosure and non-solicitation clauses.

## Key Points

### 1. Non-Compete Clauses

Non-compete clauses are essential for protecting our investments in employee training and safeguarding our trade secrets. Given the competitive nature of the mortgage-broking industry, the immediate loss of trained employees to competitors poses a significant threat to our business. These clauses provide a necessary buffer, allowing us to invest confidently in our staff and business operations.

### Importance of Non-Compete Clauses

- **Protection of Investments in Training:** We invest significant resources in training our employees to ensure they are well equipped to provide high-quality service. This training includes not only industry-specific knowledge but also proprietary methods and techniques unique to our company. Non-compete clauses protect these investments by preventing employees from taking this specialised knowledge directly to a competitor.
- **Safeguarding Business Strategies:** Our company has also developed unique business strategies and client acquisition techniques that provide us with a competitive edge. Non-compete clauses ensure that these strategies remain confidential as well, and that former employees do not use them to benefit competitors immediately upon their departure.
- **Ensuring Market Stability:** The mortgage-broking industry is highly competitive, and the loss of key employees to competitors can lead to market instability. Non-compete clauses ensure a period of transition that allows businesses to adjust, to mitigate the impact of employee turnover on their operations.

*Case References:* In our experience, the case of Dargan Financial Trust (t/as Home Loan Experts) v Isaac (<https://jade.io/article/597151>) highlights the necessity of non-compete clauses. In this case, the court upheld the non-compete clause, recognising the significant investment in training and the potential for substantial business loss if the clause were not enforced. Similarly, in Isaac v Dargan Financial Trust (t/as Home Loan Experts)

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(<https://jade.io/article/544328>), the court acknowledged the importance of protecting the company's proprietary methods and client relationships, demonstrating the vital role of these clauses in maintaining competitive balance and business stability.

## 2. Non-Disclosure Clauses

These clauses are crucial for maintaining the confidentiality of client details and proprietary business information. Unauthorised disclosure could severely damage our reputation and client trust, both of which are critical to our operations. By protecting sensitive information, non-disclosure clauses ensure that our competitive edge and client relationships are preserved.

### Importance of Non-Disclosure Clauses

- **Protection of Client Information:** Our clients entrust us with sensitive financial information. Non-disclosure clauses ensure that this information is protected from unauthorised use or disclosure, maintaining client trust and compliance with privacy laws.
- **Safeguarding Proprietary Business Assets:** Our company has developed proprietary tools and business processes that are integral to our success. Non-disclosure clauses prevent former employees from sharing these assets with competitors or using them for personal gain.
- **Maintaining Competitive Advantage:** In the mortgage-broking industry, maintaining a competitive advantage is crucial. Non-disclosure clauses help ensure that our unique business practices and innovations remain confidential, allowing us to retain our market position.

## 3. Non-Solicitation Clauses

Our company invests heavily in generating new leads, which brokers then convert into repeat and referral business. Without our initial investment, brokers would not have the opportunity to build these relationships. Non-solicitation clauses protect this investment by preventing former employees from soliciting our clients and staff, thus maintaining the integrity of our client relationships and workforce stability.

## Importance of Non-Solicitation Clauses

- **Protecting Investments in Lead Generation:** Non-solicitation clauses ensure the substantial commitments of financial and other resources that we make to attract new business are protected. Relaxing these clauses would undermine our ability to secure a return on our investments and could lead to increased costs and reduced business stability.
- **Maintaining Client Relationships:** By preventing former employees from soliciting our clients, we can ensure consistent and high-quality service, which supports client retention and satisfaction. This is crucial for our long-term success and the protection of our brand's reputation.
- **Facilitating Workforce Stability:** Non-solicitation clauses help maintain a cohesive team focused on delivering exceptional service. This stability is essential for both operational efficiency and maintaining a positive workplace culture.

## Feedback from Founder

Where the business makes a significant investment in training or marketing, there is a major risk if the staff member moves to a role with a competitor. If the business is unable to manage that risk, it is likely to hinder investment in training the team, which hurts the Australian economy and could cause a shift to a control style of management, such as separating large roles with higher skill levels into many smaller roles to reduce exposure if one person leaves. The goal is to balance business needs with enabling people to move where appropriate. Thus, the ideal legislation should consider the investment and risk of the business.

## Recommendations for the Review

1. **Balanced Approach:** Implement a framework that recognises the legitimate interests of businesses in protecting their investments in employee training and more, while also considering the mobility and career growth of employees.
2. **Industry-Specific Considerations:** Acknowledge the unique characteristics of the mortgage-broking industry, which necessitate

certain protections for businesses due to the long-term nature of client relationships and the specialised knowledge required.

3. **Clear Guidelines and Exceptions:** Provide clarity on rules and exceptions to the required use of these clauses to ensure they are not overly restrictive but still offer necessary protection for business interests.

## Conclusion

We appreciate the opportunity to provide input on this important matter. The protection of our business interests through reasonable and enforceable restraint clauses is crucial for the sustainability and growth of our company. We hope that our concerns will be carefully considered in the review process.

Thank you for your attention to this matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Alan Hemmings".

Alan Hemmings  
Chief Executive Officer  
Home Loan Experts